

House Bill 2480

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Creates exception to prohibition on recording communications for person who records conversation during or regarding commission of offense against person.

Creates exception to rule against hearsay for translation by qualified interpreter.

Expands venue for trial of two or more offenses involving domestic violence or abuse between same defendant and victim.

Requires defendant to give notice of intent to introduce evidence on issue of insanity at least 60 days before trial.

Modifies provisions relating to prior convictions for felony sex crimes in other jurisdictions.

Provides that, upon receipt of petition to initiate commitment proceedings of extremely dangerous person with mental illness, court shall order that person be held in custody pending evaluation and hearing.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to legal proceedings; creating new provisions; amending ORS 40.450, 41.910, 131.315, 137.719, 161.309, 165.540 and 426.701; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 165.540 is amended to read:

165.540. (1) Except as otherwise provided in ORS 133.724 or 133.726 or subsections (2) to (7) of this section, a person may not:

(a) Obtain or attempt to obtain the whole or any part of a telecommunication or a radio communication to which the person is not a participant, by means of any device, contrivance, machine or apparatus, whether electrical, mechanical, manual or otherwise, unless consent is given by at least one participant.

(b) Tamper with the wires, connections, boxes, fuses, circuits, lines or any other equipment or facilities of a telecommunication or radio communication company over which messages are transmitted, with the intent to obtain unlawfully the contents of a telecommunication or radio communication to which the person is not a participant.

(c) Obtain or attempt to obtain the whole or any part of a conversation by means of any device, contrivance, machine or apparatus, whether electrical, mechanical, manual or otherwise, if not all participants in the conversation are specifically informed that their conversation is being obtained.

(d) Obtain the whole or any part of a conversation, telecommunication or radio communication from any person, while knowing or having good reason to believe that the conversation, telecommunication or radio communication was initially obtained in a manner prohibited by this section.

(e) Use or attempt to use, or divulge to others, any conversation, telecommunication or radio communication obtained by any means prohibited by this section.

(2)(a) The prohibitions in subsection (1)(a), (b) and (c) of this section do not apply to:

(A) Officers, employees or agents of a telecommunication or radio communication company who

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 perform the acts prohibited by subsection (1)(a), (b) and (c) of this section for the purpose of con-
 2 struction, maintenance or conducting of their telecommunication or radio communication service,
 3 facilities or equipment.

4 (B) Public officials in charge of and at jails, police premises, sheriffs' offices, Department of
 5 Corrections institutions and other penal or correctional institutions, except as to communications
 6 or conversations between an attorney and the client of the attorney.

7 (b) Officers, employees or agents of a telecommunication or radio communication company who
 8 obtain information under paragraph (a) of this subsection may not use or attempt to use, or divulge
 9 to others, the information except for the purpose of construction, maintenance, or conducting of
 10 their telecommunication or radio communication service, facilities or equipment.

11 (3) The prohibitions in subsection (1)(a), (b) or (c) of this section do not apply to subscribers or
 12 members of their family who perform the acts prohibited in subsection (1) of this section in their
 13 homes.

14 (4) The prohibitions in subsection (1)(a) of this section do not apply to the receiving or obtaining
 15 of the contents of any radio or television broadcast transmitted for the use of the general public.

16 (5) The prohibitions in subsection (1)(c) of this section do not apply to:

17 (a) A person who records a conversation during [*a felony that endangers human life*] **or re-**
 18 **garding the commission of an offense against any person;**

19 (b) A person who records a conversation in which a law enforcement officer is a participant, if:

20 (A) The recording is made while the officer is performing official duties;

21 (B) The recording is made openly and in plain view of the participants in the conversation;

22 (C) The conversation being recorded is audible to the person by normal unaided hearing; and

23 (D) The person is in a place where the person lawfully may be;

24 (c) A person who, pursuant to ORS 133.400, records an interview conducted by a peace officer
 25 in a law enforcement facility;

26 (d) A law enforcement officer who is in uniform and displaying a badge and who is operating:

27 (A) A vehicle-mounted video camera that records the scene in front of, within or surrounding
 28 a police vehicle, unless the officer has reasonable opportunity to inform participants in the conver-
 29 sation that the conversation is being obtained; or

30 (B) A video camera worn upon the officer's person that records the officer's interactions with
 31 members of the public while the officer is on duty, unless:

32 (i) The officer has an opportunity to announce at the beginning of the interaction that the con-
 33 versation is being obtained; and

34 (ii) The announcement can be accomplished without causing jeopardy to the officer or any other
 35 person and without unreasonably impairing a criminal investigation; or

36 (e) A law enforcement officer who, acting in the officer's official capacity, deploys an Electro-
 37 Muscular Disruption Technology device that contains a built-in monitoring system capable of re-
 38 cording audio or video, for the duration of that deployment.

39 (6) The prohibitions in subsection (1)(c) of this section do not apply to persons who intercept
 40 or attempt to intercept with an unconcealed recording device the oral communications that are part
 41 of any of the following proceedings:

42 (a) Public or semipublic meetings such as hearings before governmental or quasi-governmental
 43 bodies, trials, press conferences, public speeches, rallies and sporting or other events;

44 (b) Regularly scheduled classes or similar educational activities in public or private institutions;

45 or

1 (c) Private meetings or conferences if all others involved knew or reasonably should have known
2 that the recording was being made.

3 (7) The prohibitions in subsection (1)(a), (c), (d) and (e) of this section do not apply to any:

4 (a) Radio communication that is transmitted by a station operating on an authorized frequency
5 within the amateur or citizens bands; or

6 (b) Person who intercepts a radio communication that is transmitted by any governmental, law
7 enforcement, civil defense or public safety communications system, including police and fire, readily
8 accessible to the general public provided that the interception is not for purposes of illegal activity.

9 (8) Violation of subsection (1) or (2)(b) of this section is a Class A misdemeanor.

10 (9) The exception described in subsection (5)(b) of this section does not authorize the person
11 recording the law enforcement officer to engage in criminal trespass as described in ORS 164.243,
12 164.245, 164.255, 164.265 or 164.278 or to interfere with a peace officer as described in ORS 162.247.

13 (10) As used in this section:

14 (a) "Electro-Muscular Disruption Technology device" means a device that uses a high-voltage,
15 low power charge of electricity to induce involuntary muscle contractions intended to cause tem-
16 porary incapacitation. "Electro-Muscular Disruption Technology device" includes devices commonly
17 known as tasers.

18 (b) "Law enforcement officer" has the meaning given that term in ORS 133.726.

19 **SECTION 2.** ORS 41.910 is amended to read:

20 41.910. Evidence of the contents of any wire or oral communication intercepted:

21 (1) In violation of ORS 165.540 [*shall not be*] **is not** admissible in any court of this state, except
22 as evidence of unlawful interception or when the evidence was created by the use of a video camera
23 worn upon a law enforcement officer's person and the officer either substantially complied with or
24 attempted in good faith to comply with ORS 165.540 (5)(d)(B).

25 (2) Under ORS 165.540 (2)(a) [*shall not be*] **is not** admissible in any court of this state unless:

26 (a) **The interception is otherwise permitted under ORS 165.540 (5)(a); or**

27 [(a)] (b)(A) The communication was intercepted by a public official in charge of and at a jail,
28 police premises, sheriff's office, Department of Corrections institution or other penal or correctional
29 institution; and

30 [(b)] (B) The participant in the communication, against whom the evidence is being offered, had
31 actual notice that the communication was being monitored or recorded.

32 **SECTION 3. The amendments to ORS 41.910 and 165.540 by sections 1 and 2 of this 2019**
33 **Act apply to offenses alleged to have been committed on or after the effective date of this**
34 **2019 Act.**

35 **SECTION 4.** ORS 40.450 is amended to read:

36 40.450. As used in ORS 40.450 to 40.475, unless the context requires otherwise:

37 (1) A "statement" is:

38 (a) An oral or written assertion; or

39 (b) Nonverbal conduct of a person, if intended as an assertion.

40 (2) A "declarant" is a person who makes a statement.

41 (3) "Hearsay" is a statement, other than one made by the declarant while testifying at the trial
42 or hearing, offered in evidence to prove the truth of the matter asserted.

43 (4) A statement is not hearsay if:

44 (a) The declarant testifies at the trial or hearing and is subject to cross-examination concerning
45 the statement, and the statement is:

1 (A) Inconsistent with the testimony of the witness and was given under oath subject to the
2 penalty of perjury at a trial, hearing or other proceeding, or in a deposition;

3 (B) Consistent with the testimony of the witness and is offered to rebut an inconsistent state-
4 ment or an express or implied charge against the witness of recent fabrication or improper influence
5 or motive; or

6 (C) One of identification of a person made after perceiving the person.

7 (b) The statement is offered against a party and is:

8 (A) That party's own statement, in either an individual or a representative capacity;

9 (B) A statement of which the party has manifested the party's adoption or belief in its truth;

10 (C) A statement by a person authorized by the party to make a statement concerning the sub-
11 ject;

12 (D) A statement by the party's agent or servant concerning a matter within the scope of the
13 agency or employment, made during the existence of the relationship; or

14 (E) A statement by a coconspirator of a party during the course and in furtherance of the con-
15 spiracy.

16 (c) The statement is made in a deposition taken in the same proceeding pursuant to ORCP 39
17 I.

18 (d) **The statement is a translation by a qualified interpreter, as defined in ORS 45.275 or**
19 **45.285, of a statement made by or to a party or a witness.**

20 **SECTION 5. The amendments to ORS 40.450 by section 4 of this 2019 Act apply to trans-**
21 **lations occurring on or after the effective date of this 2019 Act.**

22 **SECTION 6.** ORS 131.315 is amended to read:

23 131.315. (1) If conduct constituting elements of an offense or results constituting elements of an
24 offense occur in two or more counties, trial of the offense may be held in any of the counties con-
25 cerned.

26 (2) If a cause of death is inflicted on a person in one county and the person dies therefrom in
27 another county, trial of the offense may be held in either county.

28 (3) If the commission of an offense commenced outside this state is consummated within this
29 state, trial of the offense shall be held in the county in which the offense is consummated or the
30 interest protected by the criminal statute in question is impaired.

31 (4) If an offense is committed on any body of water located in, or adjacent to, two or more
32 counties or forming the boundary between two or more counties, trial of the offense may be held in
33 any nearby county bordering on the body of water.

34 (5) If an offense is committed in or upon any railroad car, vehicle, aircraft, boat or other
35 conveyance in transit and it cannot readily be determined in which county the offense was com-
36 mitted, trial of the offense may be held in any county through or over which the conveyance passed.

37 (6) If an offense is committed on the boundary of two or more counties or within one mile
38 thereof, trial of the offense may be held in any of the counties concerned.

39 (7) A person who commits theft, burglary or robbery may be tried in any county in which the
40 person exerts control over the property that is the subject of the crime.

41 (8) If the offense is an attempt or solicitation to commit a crime, trial of the offense may be held
42 in any county in which any act that is an element of the offense is committed.

43 (9) If the offense is criminal conspiracy, trial of the offense may be held in any county in which
44 any act or agreement that is an element of the offense occurs.

45 (10) A person who in one county commits an inchoate offense that results in the commission of

1 an offense by another person in another county, or who commits the crime of hindering prosecution
 2 of the principal offense, may be tried in either county.

3 (11) A criminal nonsupport action may be tried in any county in which the dependent child is
 4 found, irrespective of the domicile of the parent, guardian or other person lawfully charged with
 5 support of the child.

6 (12) If the offense is theft, forgery or identity theft and the offense consists of an aggregate
 7 transaction involving more than one county, trial of the offense may be held in any county in which
 8 one of the acts of theft, forgery or identity theft was committed.

9 (13) When a prosecution is for violation of the Oregon Securities Law, the trial of the offense
 10 may be held in the county in which:

11 (a) The offer to purchase or sell securities took place or where the sale or purchase of securities
 12 took place; or

13 (b) Any act that is an element of the offense occurred.

14 (14) When a prosecution under ORS 165.692 and 165.990 or 411.675 and 411.990 (2) and (3) in-
 15 volves Medicaid funds, the trial of the offense may be held in the county in which the claim was
 16 submitted for payment or in the county in which the claim was paid.

17 (15)(a) If the offense is stalking under ORS 163.732 and involves contacts as defined in ORS
 18 163.730 in more than one county, trial of the offense may be held in any county in which a contact
 19 occurred.

20 (b) If the offense is violating a court's stalking protective order under ORS 163.750, trial of the
 21 offense may be held in the county in which the defendant engaged in conduct prohibited by the order
 22 or in the county in which the order was issued.

23 **(16) If two or more offenses involving domestic violence, as defined in ORS 135.230, abuse,**
 24 **as defined in ORS 107.705 or 419B.005, or abuse of an elderly person, as described in ORS**
 25 **124.050, are alleged to have occurred between the same defendant and victim and could be**
 26 **charged in the same charging instrument under ORS 132.560, trial of the offenses may be**
 27 **held in any county in which one of the acts in the charging instrument was committed, with**
 28 **the agreement of the district attorney of each county in which the defendant could be**
 29 **charged.**

30 **SECTION 7. The amendments to ORS 131.315 by section 6 of this 2019 Act apply to of-**
 31 **fenses alleged to have been committed on or after the effective date of this 2019 Act.**

32 **SECTION 8.** ORS 161.309 is amended to read:

33 161.309. (1) The defendant may not introduce evidence on the issue of insanity under ORS
 34 161.295, unless the defendant:

35 (a) Gives notice of intent to do so in the manner provided in subsection (3) of this section; and

36 (b) Files with the court a report of a psychiatric or psychological evaluation, conducted by a
 37 certified evaluator, in the manner provided in subsection (4) of this section.

38 (2) The defendant may not introduce in the case in chief expert testimony regarding partial re-
 39 sponsibility or diminished capacity under ORS 161.300 unless the defendant gives notice of intent to
 40 do so in the manner provided in subsection (3) of this section.

41 (3)(a) A defendant who is required under subsection (1) or (2) of this section to give notice shall
 42 file a written notice of purpose at the time the defendant pleads not guilty.

43 **(b) Notwithstanding paragraph (a) of this subsection, the court may, for good cause,**
 44 **permit the defendant [may] to file the notice at any time after the plea but at least 60 days before**
 45 **trial [when just cause for failure to file the notice at the time of making the plea is shown].**

1 (c) If the defendant fails to file notice **as provided in this subsection**, the defendant may not
 2 introduce evidence for the establishment of a defense under ORS 161.295 or 161.300 unless the court,
 3 in its discretion, permits the evidence to be introduced where just cause for failure to file the notice
 4 is shown.

5 (4) A defendant who is required under subsection (1) of this section to file a report of a psy-
 6 chiatric or psychological evaluation shall file the report before trial. The report must be based on
 7 an evaluation conducted after the date of the alleged offense and must address the issue of insanity
 8 under ORS 161.295 and the dispositional determination described in ORS 161.325. If the defendant
 9 fails to file a complete report before trial, the defendant may not introduce evidence for the estab-
 10 lishment of a defense under ORS 161.295 unless:

11 (a) The court, in its discretion, permits the evidence to be introduced when just cause for failure
 12 to file the report is shown; and

13 (b) If the defendant is charged with a felony, the defendant is tried by a jury.

14 (5)(a) A court may not accept a plea of guilty except for insanity to a felony unless a report
 15 described in subsection (4) of this section is filed with the court. If the report has not been filed, the
 16 court may order that a psychiatric or psychological evaluation of the defendant be conducted by a
 17 certified evaluator and a report of the evaluation be filed with the court.

18 (b) When the court orders an evaluation of a financially eligible person under this subsection,
 19 the court shall order the public defense services executive director to pay a reasonable fee for the
 20 evaluation from funds available for that purpose.

21 (c) A certified evaluator performing an evaluation of a defendant on the issue of insanity under
 22 this subsection is not obligated to evaluate the defendant for fitness to proceed unless, during the
 23 evaluation, the certified evaluator determines that the defendant's fitness to proceed is drawn in
 24 question.

25 (6) As used in this section, "certified evaluator" means a psychiatrist or psychologist who holds
 26 a valid certification under the provisions of ORS 161.392.

27 **SECTION 9. The amendments to ORS 161.309 by section 8 of this 2019 Act apply to notices**
 28 **of intent to introduce evidence on the issue of insanity under ORS 161.295 given on or after**
 29 **the effective date of this 2019 Act.**

30 **SECTION 10.** ORS 137.719 is amended to read:

31 137.719. (1) The presumptive sentence for a sex crime that is a felony is life imprisonment
 32 without the possibility of release or parole if the defendant has been sentenced for sex crimes that
 33 are felonies at least two times prior to the current sentence.

34 (2) The court may impose a sentence other than the presumptive sentence provided by sub-
 35 section (1) of this section if the court imposes a departure sentence authorized by the rules of the
 36 Oregon Criminal Justice Commission based upon findings of substantial and compelling reasons.

37 (3) For purposes of this section:

38 (a) Sentences for two or more convictions that are imposed in the same sentencing proceeding
 39 are considered to be one sentence; and

40 (b) A prior sentence includes:

41 (A) Sentences imposed before, on or after July 31, 2001; and

42 (B) Sentences imposed by any other state or federal court [*for comparable offenses*] **that are**
 43 **felony sex crimes in that jurisdiction.**

44 (4) As used in this section, "sex crime" has the meaning given that term in ORS 163A.005.

45 **SECTION 11. The amendments to ORS 137.719 by section 10 of this 2019 Act apply to**

1 **crimes with sentences eligible for sentencing under ORS 137.719 alleged to have been com-**
 2 **mitted on or after the effective date of this 2019 Act.**

3 **SECTION 12.** ORS 426.701 is amended to read:

4 426.701. (1) For the purposes of this section and ORS 426.702:

5 (a) A person is “extremely dangerous” if the person:

6 (A) Is at least 18 years of age;

7 (B) Is exhibiting symptoms or behaviors of a mental disorder substantially similar to those that
 8 preceded the act described in subsection (3)(a)(C) of this section; and

9 (C) Because of a mental disorder:

10 (i) Presents a serious danger to the safety of other persons by reason of an extreme risk that
 11 the person will inflict grave or potentially lethal physical injury on other persons; and

12 (ii) Unless committed, will continue to represent an extreme risk to the safety of other persons
 13 in the foreseeable future.

14 (b) “Mental disorder” does not include:

15 (A) A disorder manifested solely by repeated criminal or otherwise antisocial conduct; or

16 (B) A disorder constituting solely a personality disorder.

17 (c) A mental disorder is “resistant to treatment” if, after receiving care from a licensed psychi-
 18 atrist and exhausting all reasonable psychiatric treatment, or after refusing psychiatric treatment,
 19 the person continues to be significantly impaired in the person’s ability to make competent decisions
 20 and to be aware of and control extremely dangerous behavior.

21 (2)(a) A district attorney may petition the court to initiate commitment proceedings described
 22 in this section if there is reason to believe a person is an extremely dangerous person with mental
 23 illness. The petition shall immediately be served upon the person.

24 (b) The person shall be advised in writing of:

25 (A) The allegation that the person is an extremely dangerous person with mental illness and
 26 may be committed to the jurisdiction of the Psychiatric Security Review Board for a maximum pe-
 27 riod of 24 months; and

28 (B) The right to a hearing to determine whether the person is an extremely dangerous person
 29 with mental illness, unless the person consents to the commitment by waiving the right to a hearing
 30 in writing after consultation with legal counsel.

31 (c) A person against whom a petition described in this subsection is filed shall have the follow-
 32 ing:

33 (A) The right to obtain suitable legal counsel possessing skills and experience commensurate
 34 with the nature of the allegations and complexity of the case and, if the person is without funds to
 35 retain legal counsel, the right to have the court appoint legal counsel;

36 (B) The right to subpoena witnesses and to offer evidence on behalf of the person at the hearing;

37 (C) The right to cross-examine any witnesses who appear at the hearing; and

38 (D) The right to examine all reports, documents and information that the court considers, in-
 39 cluding the right to examine the reports, documents and information prior to the hearing, if avail-
 40 able.

41 (d) The court shall appoint an examiner as described in ORS 426.110 to evaluate the person.

42 (3)(a) Upon receipt of a petition filed under subsection (2) of this section, the court shall
 43 schedule a hearing. **The court shall order that the person be held in custody pending evalu-**
 44 **ation by the examiner appointed under ORS 426.110 and the hearing.** At the hearing, the court
 45 shall order the person committed as an extremely dangerous person with mental illness under the

1 jurisdiction of the Psychiatric Security Review Board for a maximum of 24 months if the court finds,
 2 by clear and convincing evidence, that:

3 (A) The person is extremely dangerous;

4 (B) The person suffers from a mental disorder that is resistant to treatment; and

5 (C) Because of the mental disorder that is resistant to treatment, the person committed one of
 6 the following acts:

7 (i) Caused the death of another person;

8 (ii) Caused serious physical injury to another person by means of a dangerous weapon;

9 (iii) Caused physical injury to another person by means of a firearm as defined in ORS 166.210
 10 or an explosive as defined in ORS 164.055;

11 (iv) Engaged in oral-genital contact with a child under 14 years of age;

12 (v) Forcibly compelled sexual intercourse, oral-genital contact or the penetration of another
 13 person's anus or vagina; or

14 (vi) Caused a fire or explosion that damaged the protected property of another, as those terms
 15 are defined in ORS 164.305, or placed another person in danger of physical injury, and the fire or
 16 explosion was not the incidental result of normal and usual daily activities.

17 (b) The court shall further commit the person to a state hospital for custody, care and treatment
 18 if the court finds, by clear and convincing evidence, that the person cannot be controlled in the
 19 community with proper care, medication, supervision and treatment on conditional release.

20 (c) The court shall specify in the order whether any person who would be considered a victim
 21 as defined in ORS 131.007 of the act described in paragraph (a)(C) of this subsection, if the act had
 22 been criminally prosecuted, requests notification of any order or hearing, conditional release, dis-
 23 charge or escape of the person committed under this section.

24 (d) The court shall be fully advised of all drugs and other treatment known to have been ad-
 25 ministered to the alleged extremely dangerous person with mental illness that may substantially af-
 26 fect the ability of the person to prepare for, or to function effectively at, the hearing.

27 (e) The provisions of ORS 40.230, 40.235, 40.240, 40.250 and 179.505 do not apply to the use of
 28 the examiner's report and the court may consider the report as evidence.

29 (4) The findings of the court that a person committed an act described in subsection (3)(a)(C)
 30 of this section may not be admitted in a criminal prosecution.

31 (5) A person committed under this section shall remain under the jurisdiction of the board for
 32 a maximum of 24 months unless the board conducts a hearing and makes the findings described in
 33 subsection (6)(d) of this section.

34 (6)(a) The board shall hold a hearing six months after the initial commitment described in sub-
 35 section (3) of this section, and thereafter six months after a further commitment described in ORS
 36 426.702, to determine the placement of the person and whether the person is eligible for conditional
 37 release or early discharge. The board shall provide written notice of the hearing to the person, the
 38 person's legal counsel and the office of the district attorney who filed the initial petition under
 39 subsection (2) of this section within a reasonable time prior to the hearing. The board shall further
 40 notify the person of the following:

41 (A) The nature of the hearing and possible outcomes;

42 (B) The right to appear at the hearing and present evidence;

43 (C) The right to be represented by legal counsel and, if the person is without funds to retain
 44 legal counsel, the right to have the court appoint legal counsel;

45 (D) The right to subpoena witnesses;

1 (E) The right to cross-examine witnesses who appear at the hearing; and

2 (F) The right to examine all reports, documents and information that the board considers, in-
 3 cluding the right to examine the reports, documents and information prior to the hearing if avail-
 4 able.

5 (b) If the board determines at the hearing that the person still suffers from a mental disorder
 6 that is resistant to treatment and continues to be extremely dangerous, and that the person cannot
 7 be controlled in the community with proper care, medication, supervision and treatment if condi-
 8 tionally released, the person shall remain committed to a state hospital.

9 (c) If the board determines at the hearing that the person still suffers from a mental disorder
 10 that is resistant to treatment and continues to be extremely dangerous, but finds that the person
 11 can be controlled in the community with proper care, medication, supervision and treatment if con-
 12 ditionally released, the board shall conditionally release the person.

13 (d) If the board determines at the hearing that the person no longer suffers from a mental dis-
 14 order that is resistant to treatment or is no longer extremely dangerous, the board shall discharge
 15 the person. The discharge of a person committed under this section does not preclude commitment
 16 of the person pursuant to ORS 426.005 to 426.390.

17 (7)(a) At any time during the commitment to a state hospital, the superintendent of the state
 18 hospital may request a hearing to determine the status of the person's commitment under the juris-
 19 diction of the board. The request shall be accompanied by a report setting forth the facts supporting
 20 the request. If the request is for conditional release, the request shall be accompanied by a verified
 21 conditional release plan. The hearing shall be conducted as described in subsection (6) of this sec-
 22 tion.

23 (b) The board may make the findings described in subsection (6)(c) of this section and condi-
 24 tionally release the person without a hearing if the office of the district attorney who filed the ini-
 25 tial petition under subsection (2) of this section does not object to the conditional release.

26 (c) At any time during conditional release, a state or local mental health facility providing
 27 treatment to the person may request a hearing to determine the status of the person's commitment
 28 under the jurisdiction of the board. The hearing shall be conducted as described in subsection (6)
 29 of this section.

30 (8)(a) If the board orders the conditional release of a person under subsection (6)(c) of this sec-
 31 tion, the board shall order conditions of release that may include a requirement to report to any
 32 state or local mental health facility for evaluation. The board may further require cooperation with,
 33 and acceptance of, psychiatric or psychological treatment from the facility. Conditions of release
 34 may be modified by the board from time to time.

35 (b) When a person is referred to a state or local mental health facility for an evaluation under
 36 this subsection, the facility shall perform the evaluation and submit a written report of its findings
 37 to the board. If the facility finds that treatment of the person is appropriate, the facility shall in-
 38 clude its recommendations for treatment in the report to the board.

39 (c) Whenever treatment is provided to the person by a state or local mental health facility under
 40 this subsection, the facility shall furnish reports to the board on a regular basis concerning the
 41 progress of the person.

42 (d) Copies of all reports submitted to the board pursuant to this subsection shall be furnished
 43 to the person and to the person's legal counsel, if applicable. The confidentiality of these reports is
 44 determined pursuant to ORS 192.338, 192.345 and 192.355.

45 (e) The state or local mental health facility providing treatment to the person under this sub-

1 section shall comply with the conditional release order and any modifications of the conditions or-
 2 dered by the board.

3 (9)(a) If at any time while the person is conditionally released it appears that the person has
 4 violated the terms of the conditional release, the board may order the person returned to a state
 5 hospital for evaluation or treatment. A written order of the board is sufficient warrant for any law
 6 enforcement officer to take the person into custody. A sheriff, municipal police officer, parole or
 7 probation officer or other peace officer shall execute the order, and the person shall be returned to
 8 the state hospital as soon as practicable.

9 (b) The director of a state or local mental health facility providing treatment to a person under
 10 subsection (8) of this section may request that the board issue a written order for a person on con-
 11 ditional release to be taken into custody if there is reason to believe that the person can no longer
 12 be controlled in the community with proper care, medication, supervision and treatment.

13 (c) Within 30 days following the return of the person to a state hospital, the board shall conduct
 14 a hearing to determine if, by a preponderance of the evidence, the person is no longer fit for con-
 15 ditional release. The board shall provide written notice of the hearing to the person, the person's
 16 legal counsel and the office of the district attorney who filed the initial petition under subsection
 17 (2) of this section within a reasonable time prior to the hearing. The notice shall advise the person
 18 of the nature of the hearing, the right to have the court appoint legal counsel and the right to
 19 subpoena witnesses, examine documents considered by the board and cross-examine all witnesses
 20 who appear at the hearing.

21 (10)(a) If the person had unadjudicated criminal charges at the time of the person's initial com-
 22 mitment under this section and the state hospital or the state or local mental health facility pro-
 23 viding treatment to the person intends to recommend discharge of the person at an upcoming
 24 hearing, the superintendent of the state hospital or the director of the facility shall provide written
 25 notice to the board and the district attorney of the county where the criminal charges were initiated
 26 of the discharge recommendation at least 45 days before the hearing. The notice shall be accompa-
 27 nied by a report describing the person's diagnosis and the treatment the person has received.

28 (b) Upon receiving the notice described in this subsection, the district attorney may request an
 29 order from the court in the county where the criminal charges were initiated for an evaluation to
 30 determine if the person is fit to proceed in the criminal proceeding. The court may order the state
 31 hospital or the state or local mental health facility providing treatment to the person to perform the
 32 evaluation. The hospital or facility shall provide copies of the evaluation to the district attorney,
 33 the person and the person's legal counsel, if applicable.

34 (c) The person committed under this section may not waive an evaluation ordered by the court
 35 to determine if the person is fit to proceed with the criminal proceeding as described in this sub-
 36 section.

37 (11) The board shall make reasonable efforts to notify any person described in subsection (3)(c)
 38 of this section of any order or hearing, conditional release, discharge or escape of the person com-
 39 mitted under this section.

40 (12) The board shall adopt rules to carry out the provisions of this section and ORS 426.702.

41 (13) Any time limitation described in ORS 131.125 to 131.155 does not run during a commitment
 42 described in this section or a further commitment described in ORS 426.702.

43 **SECTION 13. The amendments to ORS 426.701 by section 12 of this 2019 Act apply to pe-**
 44 **tititions to initiate commitment proceedings filed on or after the effective date of this 2019**
 45 **Act.**

1 **SECTION 14.** This 2019 Act being necessary for the immediate preservation of the public
2 peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect
3 on its passage.

4
